

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER HERNANDEZ,

Petitioner,

vs.

BEN CURRY, Warden,

Respondent.

) No. C 08-2278 JSW (PR)

) **ORDER TO SHOW CAUSE;**  
) **GRANTING LEAVE TO PROCEED IN**  
) **FORMA PAUPERIS**

) (Docket No. 2)

**INTRODUCTION**

Petitioner, a prisoner of the State of California, currently incarcerated at Correctional Training Facility in Soledad, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision by the California Board of Parole Hearings (“Board”) to deny Petitioner parole. Petitioner’s application to proceed in forma pauperis is GRANTED (docket no. 2). This order directs Respondent to show cause why the petition should not be granted.

**BACKGROUND**

According to the petition, Petitioner was convicted of first degree murder in Los Angeles County Superior Court, and, in 1980, the trial court sentenced him to a term of seven years-to-life in state prison. In 1988 and again in 1990, the Board found Petitioner to be suitable for parole, but that decision was overturned by the Governor of California. In 2006, the Board found Petitioner unsuitable for parole at his 14th parole hearing.

Petitioner challenged this decision unsuccessfully in all three levels of the California courts.

## DISCUSSION

### I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### II Legal Claims

Petitioner alleges that the denial of parole because the decision was not based on an individualized determination, and was not supported by sufficient evidence of his unsuitability.<sup>1</sup> Liberally construed, the allegations are sufficient to warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369 (1987); *see, e.g., Morales. v. California Dep't of Corrections*, 16 F.3d 1001, 1005 (9th Cir. 1994), *rev'd on other grounds*, 514 U.S. 499 (1995).

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**

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<sup>1</sup>Petitioner's claims are set forth in the state habeas petition attached to and referenced by his federal petition.

1 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
2 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
3 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all  
4 portions of the state trial record that have been transcribed previously and that are relevant  
5 to a determination of the issues presented by the petition. If Petitioner wishes to respond  
6 to the answer, he shall do so by filing a traverse with the Court and serving it on  
7 Respondent within **thirty (30)** days of his receipt of the answer.

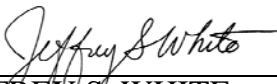
8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
9 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
10 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court  
11 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**  
12 days of receipt of the motion, and Respondent shall file with the Court and serve on  
13 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
15 the Court informed of any change of address by filing a separate paper captioned "Notice  
16 of Change of Address." He must comply with the Court's orders in a timely fashion.  
17 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
18 to Federal Rule of Civil Procedure 41(b).

19 This order terminates Docket No. 2.

20 IT IS SO ORDERED.

21 DATED: May 30, 2008

22   
23 JEFFREY S. WHITE  
24 United States District Judge  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PETER HERNANDEZ,  
Plaintiff,

Case Number: CV08-02278 JSW

**CERTIFICATE OF SERVICE**

v.


B. CURRY et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peter Hernandez  
C03015  
P.O. Box 689  
Soledad, CA 93960

Dated: May 30, 2008

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk